

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

In re: ZETIA (EZETIMIBE) ANTITRUST
LITIGATION

Case No. 2:18-md-2836

This Document Relates To:
All Actions

**DECLARATION OF STEVEN A. REED IN SUPPORT OF THE GLENMARK
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS**

I, Steven A. Reed, hereby declare as follows:

1. I am an attorney at the law firm of Morgan, Lewis & Bockius LLP and represent Defendants, Glenmark Pharmaceuticals Ltd. and Glenmark Pharmaceuticals Inc., USA, incorrectly identified as Glenmark Generics Inc., USA. I submit this declaration in support of Glenmark Defendants' Motion for Summary Judgment on all Claims.

2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from Direct Purchaser Plaintiffs' Amended Consolidated Class Action Complaint and Demand for Jury Trial filed June 27, 2019. (Dkt. No. 315).

3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from End-Payor Plaintiffs' Consolidated Class Action Complaint and Demand for Jury Trial filed September 13, 2018. (Dkt. No. 130).

4. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts from Plaintiff CVS Pharmacy, Inc.'s Amended Complaint and Demand for Jury Trial filed August 1, 2019. (Dkt. No. 455).

5. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts from Plaintiffs Rite Aid Corporation and Rite Aid Hdqtrs. Corp.'s Amended Complaint and Demand for Jury Trial filed August 1, 2019. (Dkt. No. 456).

6. Attached hereto as **Exhibit 5** is a true and correct copy of excerpts from Plaintiffs Walgreen Co., The Kroger Co., Albertsons Companies Inc., and HEB Grocery Company L.P.'s Amended Complaint and Demand for Jury Trial filed August 1, 2019. (Dkt. No. 457).

7. Attached hereto as **Exhibit 6** is a true and correct copy of excerpts from GLENMARK-ZETIA-00014842, the transmittal letter with Glenmark's Abbreviated New Drug Application ("ANDA") No. 78-560 for generic Zetia, dated October 25, 2006.

8. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts from the October 16, 2019 deposition of Vijay Soni. ("Soni Tr.").

9. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts from MRKZETIA_SIDLEY000009235, Glenmark's Notice of Paragraph IV Certification dated February 8, 2007.

10. Attached hereto as **Exhibit 9** is a true and correct copy of MRKZETIA_SIDLEY000014568, the April 19, 2010 Opinion issued by Judge Linares (D.N.J.) denying Glenmark's Motion for Partial Summary Judgment on the invalidity of Claims 1-5 and 7-13 based on double patenting.

11. Attached hereto as **Exhibit 10** is a true and correct copy of GLENMARK-ZETIA-00281992, an email from Vijay Soni dated August 5, 2009 summarizing a discussion with Schering Plough.

12. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts from the October 18, 2019 deposition of Paul Matukaitis. ("Matukaitis Tr.").

13. Attached hereto as **Exhibit 12** is a true and correct copy of GLENMARK-ZETIA-00304970, Vijay Soni's notes regarding the opening and counter proposals to settle the patent infringement litigation between Merck and Glenmark.

14. Attached hereto as **Exhibit 13** is a true and correct copy of excerpts from the October 15, 2019 deposition of Timothy Hester. ("Hester Tr.").

15. Attached hereto as **Exhibit 14** is a true and correct copy of a law review article titled *The Actavis Inference: Theory and Practice* by Aaron Edlin et al. published in the Rutgers University Law Review in 2015.

16. Attached hereto as **Exhibit 15** is a true and correct copy of excerpts from the October 24, 2019 deposition of Lawrence M. Brown. ("Brown Tr.").

17. Attached hereto as **Exhibit 16** is a true and correct copy of MRKZETIA000870261, an email from Paul Matukaitis to Vijay Soni, dated March 29, 2010, attaching a draft Settlement Agreement between Schering, MSP and Glenmark.

18. Attached hereto as **Exhibit 17** is a true and correct copy of MRKZETIA000870262, the draft Settlement Agreement between Schering, MSP, and Glenmark as of March 29, 2010.

19. Attached hereto as **Exhibit 18** is a true and correct copy of MRKZETIA000584034, a fax transmittal sheet from the FDA to Patricia Kay-Mugford at MSP Singapore Co., LLC dated February 14, 2008 regarding pediatric exclusivity.

20. Attached hereto as **Exhibit 19** is a true and correct copy of MRKZETIA_R000061858, an email from Vijay Soni to Paul Matukaitis and Edward Murray at Merck dated February 26, 2010 regarding settlement negotiations.

21. Attached hereto as **Exhibit 20** is a true and correct copy of MRKZETIA000944238, a letter from Timothy Hester to the FTC and the DOJ Antitrust Division, dated May 18, 2010, enclosing an executed copy of the Settlement Agreement between Schering, MSP, and Glenmark.

22. Attached hereto as **Exhibit 21** is a true and correct copy of excerpts from the September 26, 2019 deposition of Paul Dutra. (“Dutra Tr.”).

23. Attached hereto as **Exhibit 22** is a true and correct copy of excerpts from the November 26, 2019 deposition of Lisa Jakob. (“Jakob Tr.”).

24. Attached hereto as **Exhibit 23** is a true and correct copy of excerpts from the June 24, 2020 deposition of Thomas G. McGuire, Ph.D. (“McGuire Tr.”).

25. Attached hereto as **Exhibit 24** is a true and correct copy of excerpts from the July 9, 2020 deposition of Keith Leffler, Ph.D. (“Leffler Tr.”).

26. Attached hereto as **Exhibit 25** is a true and correct copy of excerpts from the Expert Report of Timothy Maloney, dated February 28, 2020. (“Maloney Rpt.”)

27. Attached hereto as **Exhibit 26** is a true and correct copy of excerpts from the Expert Report of Sumanth Addanki, Ph.D., dated February 28, 2020. (“Addanki Rpt.”)

28. Attached hereto as **Exhibit 27** is a true and correct copy of excerpts from the June 29, 2020 deposition of Susan Marchetti. (“Marchetti Tr.”).

29. Attached hereto as **Exhibit 28** is a true and correct copy of excerpts from the July 8, 2020 deposition of Jon E. Clark. (“J. Clark Tr.”).

30. Attached hereto as **Exhibit 29** is a true and correct copy of excerpts from the November 6, 2019 deposition of Terrance Coughlin. (“Coughlin Tr.”).

31. Attached hereto as **Exhibit 30** is a true and correct copy of GLENMARK-ZETIA-00426551, an email from Terrance Coughlin to Glenn Saldanha dated August 4, 2009.

32. Attached hereto as **Exhibit 31** is a true and correct copy of excerpts from the October 17, 2019 deposition of Paresh Wagle. (“Wagle Tr.”).

33. Attached hereto as **Exhibit 32** is a true and correct copy of excerpts from MRKZETIA_SIDLEY000238225, the Schering-MSP Complaint against Mylan filed December 16, 2009, Dkt. No. 1, Case No. 2:09-cv-06383-JLL-ES (D.N.J.).

34. Attached hereto as **Exhibit 33** is a true and correct copy of MRKZETIA_SIDLEY000160493, the May 17, 2011 Opinion issued by U.S. District Judge Jose L. Linares granting Schering’s Motion for Partial Summary Judgment in the Mylan Patent Infringement Litigation, Dkt. No. 195, Case No. 2:09-cv-06383-JLL (D.N.J.).

35. Attached hereto as **Exhibit 34** is a true and correct copy of excerpts from Plaintiffs’ Supplemental Responses and Objections to Defendants’ First Set of Requests for Admission, dated October 7, 2019.

36. Attached hereto as **Exhibit 35** is a true and correct copy of MRKZETIA_SIDLEY000235974, the Pretrial Brief of Defendant Mylan Pharmaceuticals Inc., served November 21, 2011 in the patent infringement litigation between Schering and Mylan.

37. Attached hereto as **Exhibit 36** is a true and correct copy of excerpts from MRKZETIA000615093, the Opinion issued April 27, 2012 by U.S. District Judge Jose L. Linares following the bench trial in the patent infringement litigation between Schering and Mylan.

38. Attached hereto as **Exhibit 37** is a true and correct copy of MRKZETIA000533503, a PowerPoint Presentation entitled, “CV Franchise – LOE Payer Strategy Kick-Off Meeting June 2014.”

39. Attached hereto as **Exhibit 38** is a true and correct copy of MRKZETIA000605015, a draft PowerPoint Presentation entitled, “USA Athero Franchise LOE Strategy July 28th, 2014.”

40. Attached hereto as **Exhibit 39** is a true and correct copy of MRKZETIA000510131, an email string dated October 20, 2016 regarding WILLARD: Talking Points.

41. Attached hereto as **Exhibit 40** is a true and correct copy of MRKZETIA000517429, a document entitled, “ZETIA/VYTORIN – LROP Price Plan.”

42. Attached hereto as **Exhibit 41** is a true and correct copy of MRKZETIA000519085, a document entitled, “ZETIA/VYTORIN: Event Timeline.”

43. Attached hereto as **Exhibit 42** is a true and correct copy of MRKZETIA000854171, a November 2017 email string regarding Zetia LOE Year to Date Accomplishment.

44. Attached hereto as **Exhibit 43** is a true and correct copy of MRKZETIA000854327, an email from Deborah Gan dated May 15, 2017 regarding the growth of generic Zetia.

45. Attached hereto as **Exhibit 44** is a true and correct copy of PAR_00023422, an email from Paul Campanelli dated February 16, 2017 regarding the 2017 Budget Update for Zetia/Merck.

46. Attached hereto as **Exhibit 45** is a true and correct copy of excerpts from the July 1, 2020 deposition of Robert T. Hrubiec, Ph.D., J.D. (“Hrubiec Tr.”).

47. Attached hereto as **Exhibit 46** is a true and correct copy of excerpts from the June 3, 2020 deposition of Meredith Rosenthal, Ph.D. (“Rosenthal Tr.”).

48. Attached hereto as **Exhibit 47** is a true and correct copy of excerpts from the Expert Report of Thomas G. McGuire, dated January 13, 2020. (“McGuire Rpt.”)

49. Attached hereto as **Exhibit 48** is a true and correct copy of excerpts from the Expert Report of Keith Leffler, Ph.D., dated January 13, 2020. (“Leffler Rpt.”)

50. Attached hereto as **Exhibit 49** is a true and correct copy of excerpts from the Expert Report of Susan Marchetti, dated January 13, 2020. (“Marchetti Rpt.”)

51. Attached hereto as **Exhibit 50** is a true and correct copy of excerpts from GLENMARK-ZETIA-00382731, Certificate of Analysis (“COA”) for Ezetimibe by MSN Laboratories Private Limited.

52. Attached hereto as **Exhibit 51** is a true and correct copy of excerpts from the Expert Report of Todd Clark, MBA, MS, dated January 13, 2020. (“T. Clark Rpt.”)

53. Attached hereto as **Exhibit 52** is a true and correct copy of excerpts from the Rebuttal Expert Report of Todd Clark, MBA, MS, dated June 18, 2020. (“T. Clark Rebuttal Rpt.”)

54. Attached hereto as **Exhibit 53** is a true and correct copy of excerpts from the July 2, 2020 deposition transcript of Todd Clark, MBA, MS. (“T. Clark Tr.”).

55. Attached hereto as **Exhibit 54** is a true and correct copy of excerpts from the Expert Report of Jon E. Clark, dated January 13, 2020. (“J. Clark Rpt.”)

56. Attached hereto as **Exhibit 55** is a true and correct copy of excerpts from the Court's Opinion on Defendants' motions to dismiss in this litigation, issued on August 9, 2019. (Dkt. No. 489).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed on this 10th day of August, 2020.

Respectfully submitted,

/s/ Steven A. Reed

Steven A. Reed (*pro hac vice*)
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Tel: 215.963.5000
Fax: 215.963.5001
steven.reed@morganlewis.com

*Counsel for Defendants
Glenmark Pharmaceuticals Ltd. and Glenmark
Pharmaceuticals Inc., USA, incorrectly identified as
Glenmark Generics Inc., USA*

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will automatically email notification of such filing to all counsel of record. Any materials filed under seal have separately been served on local counsel for all parties.

DATED: August 10, 2020

/s/ Richard H. Ottinger

Richard H. Ottinger (VSB No.: 38842)

VANDEVENTER BLACK LLP

101 West Main Street, Suite 500

Norfolk, VA 23510

Tel: 757.446.8600

Fax: 757.446.8670

rottinger@vanblacklaw.com

Counsel for Defendants

Glenmark Pharmaceuticals Ltd. and Glenmark

Pharmaceuticals Inc., USA, incorrectly identified as

Glenmark Generics Inc., USA